If the views which the present writer has propounded in the preceding section with regard to the rationale of the English

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to perform elsewhere, the court argued thus: "It is indisputable, that when theatrical managers with large capital invested in their business, making contracts with performers of attractive talents, and relying upon such contracts to carry on the business of their theatres, are suddenly deserted by the performers in the middle of their season, the resort to actions at law for damages must fail to afford adequate compensation. It is not always that the manager is deprived of his means of carrying on his business, but that his performers, by carrying their services to other establishments, deprive him of the fruits of his diligence and enterprise, increase the rivalry against him, and cause him an injury. It is as much his right, if he have a contract to that effect, that no other establishment shall have the services of his performers, as that he shall have them himself. There is no hardship to the actors in preventing the breach of the negative part of their contract, for every man has the right to expect to be held to his agreement when it was entered into without fraud, and he receives the consideration he demands, and his contract entitles him to." This decision was reversed (1872) 4 Daly 259; on the ground that the plaintiff, being merely the assignee of the rights of the party with whom the defendant had made a contract under which he was to go to any place of amusement to which that party might send him, had no right to maintain the suit. The remarks of the lower court, so far as they are relevant to the present subject, were in nowise impugned.

In *Daly* v. *Smith* (1874) 38 N.Y. Super. Ct. 158, 49 How. Pr. 150, the defendant who had agreed among other things to act on the stage of plaintiff's theatre, during three seasons, all such parts and characters as the plaintiff might direct, and that without the plaintiff's consent, she would not act at any other place in the city of New York during the period covered by the contract was enjoined from accepting an engagement to play during the ensuing season at another New York theatre. The decision was put upon the ground that, under the circumstances there was no adequate remedy at law, where attractive public performers suddenly desert their employers in the middle of their season, since they increase the rivalry against him by joining other establishments. The remarks of Daly, J., to this effect in *Hayes* v. *Willio*, *ubi supra.*, were approved.

This case was relied upon in *M'Caull* v. *Braham* (1883) 16 Fed. 37, where the court formulated the following rule: "Contracts for the services of artists or authors of special merit are personal and peculiar; and when they contain negative covenants which are essential parts of the agreement, as in this case, that the artists will not perform elsewhere, and the damages, in case of violation, are incapable of definite measurement, they are such as ought to be observed in good faith and specifically enforced in equity."

In *Canary* v. *Russell* (1894) 9 Misc. 558, 61 N.Y.S.R. 665, 30 N.Y. Supp. 122, the court, remarking that the jurisdiction of a court of equity to enforce negative stipulations in the case of actors was well established, granted an injunction to restrain an operatic singer from performing for another manager during the second of two seasons during which the plaintiff was entitled to command the defendants' services, upon exercising the option given by the contract. It was, however, held that the restriction was not applicable to the summer months intervening between the two seasons.

In *Philadelphia Ball Club* v. *Lajoie*, 51 Atl. 973, 202 Pa. 210, the court thus stated its reasons for granting an injunction to restrain a professional base-ball player who had sold his services to the plaintiff for a certain period